

EXHIBT 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

LORI ANN MORRIS,
Plaintiff,

Vs. CIVIL ACTION NO.
3:02-CV-962-T

FLORIDA TRANSFORMER,
EDWARD NEAL THOMPSON,
et al.,
Defendants.

DEPOSITION OF JAMES PATTERSON, taken
pursuant to stipulation and agreement before
Haley A. Phillips, Certified Shorthand Reporter,
and Commissioner for the State of Alabama at Large,
at 301 South Ripley Street, Montgomery, Alabama, on
Monday, July 10, 2006, commencing at approximately
10:30 a.m.

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APPEARANCES

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STIPULATION

It is hereby stipulated and agreed by and
between counsel representing the parties that the
deposition of JAMES PATTERSON is taken pursuant to
the Federal Rules of Civil Procedure and that said
deposition may be taken before Haley A. Phillips,
Certified Shorthand Reporter, and Commissioner for
the State of Alabama at Large, without the
formality of a commission, that objections to
questions other than objections as to the form of
the question need not be made at this time but may
be reserved for a ruling at such time as the said
deposition may be offered in evidence or used for
any other purpose by either party provided for by
the Statute.

It is further stipulated and agreed by and
between counsel representing the parties in this
case that the filing of said deposition is hereby
waived and may be introduced at the trial of this
case or used in any other manner by either party
hereto provided for by the Statute regardless of
the waiving of the filing of the same.

It is further stipulated and agreed by and

computer operator. I've trained in forensic laser mapping of crash scenes, interviewing and interrogation for the traffic crash investigator, commercial vehicle accident investigation, linear momentum and vector diagramming of the crash scene, computerized collision diagramming, pedestrian accident investigation, motorcycle accident investigation, applied physics for accident reconstruction, photography for the traffic crash investigator.

And since that time I've also reattended an update of traffic crash reconstruction in 2003. I'm trained as an operator of the Vetronic Crash Data Retrieval Systems. I'm also certified by the Alabama Peace Officers Standards and Training Commission as an instructor in the field of traffic crash investigation.

Q. Do you as part of your duties or have you as part of your duties with the Alabama State Troopers reconstructed truck

A. Yes, sir.

Q. Do you know if you've testified as an accident reconstructionist in -- expert in federal court here in the Middle District of Alabama?

A. I don't know. I can't recall.

MR. BROUGHTON: I'm going to offer -- Henry, I'm going to offer Sergeant Patterson as an expert in accident reconstruction to the extent he has opinions that he formed from his investigation of this particular case at this time.

MR. PENICK: We renew our objection to any expert opinion rendered by this witness for lack of predicate, lack of qualifications as an expert in the area of accident reconstruction.

Q. Sergeant Patterson, just to make sure that the Record is clear on this, you did form

accidents?

A. Yes, sir, I have.

Q. And for how many years have you done that?

A. Since 1993.

Q. Do you -- Are you qualified as an accident reconstructionist?

MR. PENICK: Objection to whether or not he's qualified.

A. That would be a question for the Court. I'm trained as an accident reconstructionist.

Q. Do you consider yourself qualified as an accident reconstructionist?

MR. PENICK: Same objection.

Q. You can answer.

A. That would be a question for the Court to answer.

Q. Have you testified in any civil or criminal cases as an accident reconstructionist?

A. Yes, sir, I have.

Q. How many, approximately?

A. Many. I don't know. Quite a few.

Q. In state and federal court?

an opinion as I understand it about whether the accident was avoidable or unavoidable by Mr. Thompson, the driver of the Peterbilt?

A. Yes, sir, I did.

Q. And that opinion was what?

MR. PENICK: Same objection about lack of predicate to testify as an expert witness.

A. It's my opinion that it was not possible for Mr. Thompson to avoid this crash faced with the circumstances that he was.

Q. And that opinion is based on a reasonable degree of accident reconstruction certainty based on your investigation of this accident?

A. I'm sorry. Would you repeat that?

Q. Yes, sir. Is that opinion based on a reasonable degree of accident reconstructionist's certainty based on your investigation of this accident?

MR. PENICK: Same objection to the form of the question and to

criminal investigation initiated by my unit, I did not attempt to do so.

Q. Did you interview either of the occupants of the Peterbilt?

A. It was not possible to interview Mr. Morris, and I don't recall whether I spoke with Mr. Thompson or not.

Q. Well, he had a passenger too. You don't recall --

A. I don't recall speaking to anyone. I may have. I'm not saying I didn't. I just don't recall whether that conversation occurred or if -- and even if it did the content of those conversations.

Q. When you took the -- Do your photographs -- any of your photographs depict any evidence on the roadway as to where and in which lanes the Panther vehicle had overturned in the initial accident as you described it?

A. I believe that it was blocking all of the leftmost lane and partially blocking the right lane, if not completely.

right-hand lane to the right.

Q. Were you able to determine a point of impact between the Peterbilt and the -- or an area of impact between the Peterbilt and the overturned Panther vehicle?

MR. PENICK: Let me object to testimony at this point as to whether or not he even determined the point of impact.

MR. BROUGHTON: That's what I asked.

MR. PENICK: So lack of proper predicate for him to give testimony on this point.

A. I have an opinion as to an approximate area of impact. As far as a specific point, I can't narrow it down that closely, but I do believe I can narrow it down to an area.

Q. What's your opinion as to the area of impact?

A. It's within the right-hand northbound lane of I-85.

(Defendant's Exhibit P-2 was marked for identification.)

Q. Let me show you what I've marked as Defendant's Exhibit P-2 and ask you did you take that photograph.

A. I did.

Q. Does that photograph fairly and accurately depict the scene as it was that night when you arrived?

A. Yes, sir, it did -- it does.

Q. Have either of those vehicles been -- Were either of those vehicles moved before your arrival?

A. No, sir.

Q. Can you tell me in that photograph or can you describe in that photograph how the trailer of the -- that the Peterbilt was pulling is positioned?

A. The trailer of the Peterbilt is aligned to the right side of the rightmost lane with the right side trailer wheels just outside the fog line to the right of the roadway. In other words, it's partially out of the

Q. Does the --

A. And when I describe that, I'm referring to the nose of the Peterbilt at the point that it collided with the trailer of the Kenworth.

MR. PENICK: Same objection.

Q. Did -- Can you show me on that photograph that approximate area of impact?

A. It's further back than this photograph depicts.

Q. All right. In Defendant's Exhibit P-2 if you'll look on the pavement there -- And tell me first, what is -- what is the pavement? What material of construction is in that area? Do you remember?

A. Asphalt.

Q. Asphalt.

A. It's just standard asphalt. It's not a concrete roadway.

Q. The marks I'm looking at -- And let me walk around if I can. There are some curved marks in the left-hand lane. What is your observation of those marks? You were out

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1 A. It had not.

2 Q. And any tire marks that are depicted in

3 that photograph were there the night of

4 this accident; correct?

5 A. That is correct.

6 Q. And, again, describe what you were

7 describing about these particular tire

8 marks.

9 A. These tire marks are aligned down the

10 right-side lane and --

11 Q. The right side of --

12 A. The right side of the right-hand lane.

13 They appear to lead directly to the trailer

14 tires of the --

15 This is the Peterbilt, is it not?

16 Q. Right. That's confusing.

17 A. -- the Peterbilt.

18 Q. Which trailer tires? Which side of the

19 trailer?

20 A. The left side tandems of the trailer, the

21 utility trailer pulled by that truck. They

22 appear to lead directly to it. I cannot

23 see in this photograph if they continue on

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1 past that to determine for certain whether

2 they're from the drive axle or the tandem.

3 However, they appear to stop directly at

4 the tire position of the trailer.

5 (Defendant's Exhibit P-1 was marked

6 for identification.)

7 Q. All right. Let me show you Defendant's

8 Exhibit P-2 and ask you to identify -- I

9 mean, Defendant's Exhibit P-1, which I

10 haven't yet offered, and ask you what that

11 is.

12 A. This is the crash report prepared by

13 Trooper Alex Huntley regarding this crash.

14 Q. All right. And it has been reported by

15 other people that have reviewed Defendant's

16 Exhibit P-1 that that drawing shows no skid

17 marks or tire marks.

18 MR. PENICK: Object to the preface

19 of the question about what

20 other people have said about

21 it.

22 Q. And my question to you is, does that

23 drawing show the tire marks or skid marks

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1 that are shown in Defendant's Exhibit P-2?

2 A. No, sir, it does not, nor does it

3 accurately depict the positions of the

4 vehicles.

5 MR. PENICK: Object to the

6 answer. It was nonresponsive

7 to the question.

8 Q. And do you have an explanation for that?

9 A. An explanation for why the tire marks are

10 not depicted?

11 Q. Why the tire marks are not depicted and why

12 the scene might not be accurately depicted

13 in that particular drawing in Defendant's

14 Exhibit P-1.

15 A. Trooper --

16 MR. PENICK: Object to the -- this

17 question because it requires

18 speculation on the part of the

19 witness.

20 Q. Go ahead.

21 A. Trooper Huntley prepared a not-to-scale

22 diagram. It's not intended to perfectly

23 depict the final position of this vehicle.

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1 And it poorly depicts the final positions

2 of the -- particularly vehicle number two,

3 the Thompson vehicle. And I don't know why

4 he left the tire marks off. This was a

5 very dark night. He may have failed to

6 observe them and not realized they were

7 there. But, again, that is speculating. I

8 don't know why he left them off. However,

9 they were present. He didn't put them on

10 the diagram.

11 Q. In the absence --

12 MR. PENICK: Werenew our

13 objection to that answer since

14 it was speculation on his

15 part.

16 Q. Also on the drawing -- And this is I

17 guess -- Is there a page number on that

18 drawing? I call it page four of

19 Defendant's Exhibit P-1. Why don't we

20 number these?

21 MR. BROUGHTON: Henry, do you have

22 an issue with that --

23 MR. PENICK: No, I don't.

1 vehicle traveled for 530 feet from the time
2 it ran off the road into the median until
3 it came back into the roadway.

4 Q. All right. Now -- And so you arrived at
5 the scene. And was there anybody other
6 than Alex Huntley there taking field notes?

7 A. I'm sure there were a lot of people there.
8 These crashes tend to draw lots of
9 emergency personnel when they involve
10 commercial vehicles. There were firemen
11 there. I don't recall if there were other
12 troopers there. You know, I've been to
13 many, many crashes since this time. I
14 don't -- I didn't make any notes as to who
15 was present.

16 Q. And I think you said that you were there
17 for a limited time. How long were you
18 there?

19 A. I don't know. Maybe an hour, hour and a
20 half, I'm guessing. I have no idea exactly
21 how long I was there.

22 Q. All right. When you got there, did you see
23 the driver of the Peterbilt, Mr. Thompson?

1 vehicles that had come to a rest by the
2 time he saw them.

3 A. It's possible.

4 Q. Okay. So you're not -- So you can't say
5 for certain that the UPS driver saw any of
6 this accident?

7 A. My best recollection is that he did, but I
8 do not recall that for 100 percent
9 certainty.

10 Q. Do you recall talking to Trooper Huntley?

11 A. I don't recall talking to him. I'm sure I
12 did. It would be unnatural for me not to
13 be at the scene of a crash and speak with
14 the trooper on the scene. However, I don't
15 recall speaking to him.

16 Q. Do you recall speaking to anybody there
17 other than the UPS driver?

18 A. No. But I'm sure I did.

19 Q. Now is your chance. Is there anybody else
20 that you spoke to?

21 A. Again, yes, I'm sure there are other people
22 I spoke to. I thought I just answered
23 that, Mr. Penick. I don't recall who they

1 A. I don't recall seeing him.

2 Q. Do you recall talking to him?

3 A. No, sir, I don't recall that.

4 Q. Do you recall talking to the passenger in
5 the vehicle with Mr. Thompson, Mr. Tidwell?

6 A. I do not -- I do not recall that.

7 Q. Did you interview or talk to anyone?

8 A. I don't -- I remember talking to the driver
9 of the UPS truck. I recalled that today.
10 I don't remember the substance of that
11 conversation.

12 Q. But you don't know whether or not the
13 driver of the UPS truck actually witnessed
14 the collision, though, do you?

15 A. My best recollection is that he did. I
16 know that he was involved in a hard braking
17 event to avoid colliding into the rear of
18 the truck. But I don't recall exactly what
19 he said.

20 Q. Do you think that hard braking that he did,
21 though, was to avoid colliding with some
22 stationary objects that he saw in front of
23 him? In other words, these two other

1 were or what we talked about. Once I
2 determined that the driver of the causative
3 vehicle was deceased, I ceased being in
4 investigator mode. I'm a criminal
5 investigator.

6 Q. And I believe that you said once you got
7 there and you saw that Morris was deceased
8 that you decided that it was not a criminal
9 investigation?

10 A. It was obvious to me that Mr. Morris had
11 caused this crash, therefore, there was no
12 one to prosecute.

13 Q. Okay. Let me go back and look at the
14 Defendant's Exhibit 1 and see if you can
15 help me with this. On the front of
16 Defendant's Exhibit 1, there appears to be
17 a box that says prime contributing
18 circumstances. Is that what it says?

19 A. Yes, sir.

20 Q. And it says 27. Do you know what 27 is?

21 A. Yes, sir. It's at the bottom left of your
22 report.

23 Q. I can't read it it's so small. Can you

Q. But wouldn't it also depend upon how much light you're throwing out there on the object?

A. Absolutely. It would depend on the candle power of the light source.

Q. On a --

A. Headlights are all much the same.

Q. On a very dark night like this, do you think that they should -- a person should have had on his high beams or low beams?

A. Depending on whether he's meeting any traffic or not or following any traffic. He would need to be in compliance with Alabama law regarding headlight use. And it's an interstate highway.

Q. Also on the police report down near the Peterbilt -- this is your Exhibit 1 -- where it says other contributing circumstances it says 97. What is that?

A. 97 means none, that there was no contributing circumstance on the part of the Peterbilt.

Q. Okay.

A. In other words, he did nothing wrong.

Q. In your opinion?

A. That would be in the opinion of Trooper Huntley who made that report. However, I concur.

Q. When you gave your opinion about how this accident occurred, in addition to the lighting you said the alignment of the vehicles prior to impact.

A. Yes.

Q. Do you have any knowledge about the alignment of the vehicles prior to impact?

A. I have -- Their final rest positions and the marks on the roadway indicate to me that the Morris vehicle was lying on its left side with the rear of the trailer toward the median, the tractor out in both lanes.

Q. But I believe you said that the -- in your earlier testimony that the tractor was partially blocking the right lane. Is that what you said?

A. Mostly blocking the right lane.

Q. All right. Now, on this particular straightaway, did this road have an emergency lane off to the right?

A. Yes, sir it did.

Q. And I think you used the term fog line. Is that that solid white line that's on the far right of the roadway?

A. Yes, sir.

Q. And then beyond that white line is the emergency lane; right?

A. Yes, sir.

Q. Do you know how wide that emergency lane is?

A. I didn't measure this one. Typically ten feet.

Q. Do you know how wide a tractor-trailer is?

A. Typically eight to eight and a half feet.

Q. So a tractor-trailer could really go down that emergency lane; right?

A. It's physically -- Its dimensions allow it to do so. Whether it could swerve into it and maintain alignment in a 10-foot lane without a trailer swing or going off the

roadway to the right depends on how much time there is to react. But it's physically -- Its physical dimensions would allow it to drive down an emergency lane.

Q. And I think you mentioned the side of the roadway. Do you know whether or not the side of the roadway was essentially level at this location?

A. My best recollection of this is that it's not. It slopes off to the right toward a wooded area, a wet wooded area.

Q. Well, it always slopes off to the right on the right-hand side. But does it slope greatly or slightly?

A. Enough to -- A significant grade.

Q. Do you think there's a significant grade there?

A. Yes, sir. My best recollection. You know --

Q. But you don't have any pictures of that right now to refresh your recollection, do you?

A. No.

1 Q. Have you ever seen a cab to be totally
 2 separated from a tractor in any other
 3 accident?
 4 A. Quite a few times.
 5 Q. Can you recall any one right here?
 6 A. I recall one. I can't remember the -- I
 7 know the decedent's name was Tindall. It
 8 happened on U.S. 231 just south of
 9 Montgomery. That's one that I can recall.
 10 However, there have been many. These cabs
 11 are typically air mounted. They're mounted
 12 on airbags that allow a more comfortable
 13 ride for these stiffly suspended trucks.
 14 They're not substantially bolted down to
 15 the cab. In a crash where forces are
 16 exerted on them, they can -- They come off
 17 quite often, that's what I'm trying to say.
 18 Q. And when you mention Tindall, how long was
 19 that that that accident occurred?
 20 A. Maybe year and a half, two years. But
 21 there have been many more than that.
 22 Q. 2004?
 23 A. Something like that.

1 Q. All right. Now, you also said that your
 2 opinion was based on your knowledge of
 3 visibility?
 4 A. Based on my training and experience in the
 5 field of conspicuity.
 6 Q. And how many courses have you had in that?
 7 A. Almost every crash investigation course
 8 that I have taken deals in some form with
 9 driver perception and conspicuity factors.
 10 Because our vision is the most important
 11 sense that we have when it comes to
 12 operating safely a motor vehicle.
 13 Therefore, any crash investigation course
 14 must deal with conspicuity issues.
 15 However, the one that focused almost
 16 exclusively on conspicuity issues was the
 17 human factors course which was 40 hours of
 18 training with in the field of nighttime
 19 visibility and conspicuity testing of
 20 various vehicles, pedestrians and types of
 21 headlights. But every crash investigation
 22 course deals with conspicuity.
 23 Q. Let me give you a hypothetical about

1 conspicuity. What if Thompson had seen
 2 Morris' vehicle in time to apply his
 3 brakes, slow the vehicle and take it off to
 4 the right into the emergency lane, could
 5 the accident have been avoided?
 6 MR. BROUGHTON: Object to the
 7 form. Assumes facts not in
 8 evidence.
 9 A. Had he -- Had it been possible for him to
 10 see that vehicle in his path in time to do
 11 so, then he could have either brought the
 12 vehicle to a stop or did, as you said,
 13 slowed it and driven around it in the
 14 emergency lane. That would have required
 15 him to be able to see the vehicle at some
 16 500 feet away.
 17 Q. To stop it?
 18 A. No. He must first see it, identify it as a
 19 hazard, formulate a plan as to what he
 20 needs to do, and then initiate a physical
 21 reaction and then carry out that physical
 22 reaction. All that takes time. In other
 23 words, reaction time.

1 Q. Okay.
 2 A. There's something -- You're driving down a
 3 roadway at night. You see something in
 4 your path. First, you have to say what is
 5 that and then decide that it -- whether it
 6 is or is not a hazard to you and then you
 7 have to decide what to do about it. All
 8 that takes time. If he's going 70 miles
 9 per hour, then he's traveling at, what, 105
 10 feet per second approximately and every
 11 second that goes by he's covering up 105
 12 feet of this space that he has available to
 13 initiate his plan to get around this
 14 hazard.
 15 Q. I think you told us earlier that it takes
 16 four-tenths of a second reaction time --
 17 A. No, sir, that's not what I said. I said
 18 there's a brake lag in a commercial vehicle
 19 typically of four-tenths of a second.
 20 Four-tenths of a second reaction time is
 21 absolutely ridiculous. That's not what I
 22 said.
 23 Q. All right. But assuming he has perception

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1 clear, you have nothing here today to tell
 2 you how much skid marks Thompson's
 3 tractor-trailer made until impact?
 4 A. No. I did not measure those marks myself.
 5 And if they were measured, I've not been
 6 made aware of the measurements.
 7 Q. All right.
 8 MR. PENICK: That's all.
 9 MR. BROUGHTON: Just one follow
 10 up.
 11 EXAMINATION
 12 BY MR. BROUGHTON:
 13 Q. Everything you saw, the tracks of the
 14 Morris vehicle down in the median, all that
 15 evidence is consistent with a driver simply
 16 falling asleep?
 17 MR. PENICK: Objection to --
 18 Objection to the question.
 19 Assumes facts in evidence and
 20 is conjecture and
 21 hypothetically, speculative
 22 and everything else.
 23 Q. You can answer.

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1 A. Yes.
 2 MR. BROUGHTON: That's all I
 3 have.
 4 MR. PENICK: Let me follow up with
 5 that question.
 6 EXAMINATION
 7 BY MR. PENICK:
 8 Q. Do you have any evidence whatsoever to tell
 9 you that Morris fell asleep when he went
 10 into the median?
 11 A. I don't have any evidence directly from
 12 Mr. Morris who was deceased, therefore, I
 13 could not ask him any questions. What I
 14 can say based on my training and experience
 15 in traffic crash investigation, the
 16 movements of his vehicle are completely
 17 consistent with many other crashes that
 18 were the result of an asleep driver. That
 19 combined with the time of the morning,
 20 3:25 a.m. -- I did not inspect his
 21 logbook. I don't know what his working
 22 hours had been. But a 3:25 a.m. crash, a
 23 driver going off into the median, that

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1 causes me to form an opinion that
 2 drowsiness or being asleep is the most
 3 likely cause of this.
 4 Q. Okay.
 5 A. However, I cannot substantiate that with
 6 any physical or forensic evidence.
 7 Q. And not to any degree of certainty?
 8 A. No.
 9 Q. For example; as you just said, you don't
 10 know how long he had been driving before he
 11 went off; right?
 12 A. No, I don't.
 13 Q. You don't know whether or not he had just
 14 started driving, do you?
 15 A. Don't know.
 16 Q. And you don't know whether or not another
 17 vehicle could have forced him off the road
 18 either, do you?
 19 A. I am more convinced that that did not occur
 20 because of the angle that he went off the
 21 roadway at was not abrupt.
 22 Q. Typically if somebody merged over onto
 23 him -- if somebody merged over into his

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1 lane, wouldn't he go off -- go off into the
 2 median?
 3 A. He might. I wouldn't.
 4 Q. Okay.
 5 A. If a car was coming over on me, I'd stay
 6 there.
 7 Q. You don't have any evidence that a car --
 8 Well, let me rephrase that.
 9 A. You're correct.
 10 Q. Well, you don't have any evidence whether
 11 or not someone had forced him off the road.
 12 A. There's no evidence to indicate that
 13 someone had forced him off the road.
 14 Q. And you don't know whether or not that
 15 occurred, do you?
 16 A. Well, what we'd have to assume is that if
 17 it's a car that it's in his blind spot. To
 18 be in a position to force him off the road,
 19 it has to be in his blind spot. How can
 20 something you can't see force you off the
 21 road?
 22 Q. Somebody was driving along in the outside
 23 lane and started moving over into the